IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.295 of 2005.

Parveen Iqbal Mandai w/o.
detenue Mohd.Iqbal Hussain Mandai ..Petitioner

Versus

Mr.M.N.Roy,
the Commissioner of Police,
Mumbai & Others ..Respondents

Mr.U.N.Tripathi i/b. Chandrakant Talekar for the Petitioner.

Mrs.A.S.Pai, APP for the Respondents.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE :16th August, 2005

Oral Judgment (Per S.B.Mhase, J.)

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner is seeking Habeas Corpus by challenging the order dated 16.11.2004 passed under sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, (hereinafter referred to as "the M.P.A.D. Act") detaining Mohammed Iqbal @ Shembdya Iqbal @ Iqbal Jogeshwari Mohammed Hussain Mandal, who is husband of the Petitioner.

2. The husband of the Petitioner was detained by an order dated 16.11.2004 under sub-section (2) of Section 3 of the M.P.A.D.Act. By order dated 16.11.2004 the detention order was for a period of one year. The said order was served and executed on the husband of the petitioner on 26.11.2004. The detention is based on two C.Rs and two in-camera statements recorded by the sponsoring authority. In both the C.R's bail was already granted and while the detenu was on bail the order for detention has been passed.

3. It appears that only one ground is pressed by the learned Counsel for the applicant, namely that the representation made by the detenu on 26.4.2005 to the State Government through his lawyer has not been considered by the State Government expeditiously and diligently with proper application of mind and the continuous detention is illegal and the order of detention is ought to be quashed and set aside. A reply has been filed to the same. As reflected from the reply dated 21.6.2005, filed by one Shri Shirishkumar Mahadeo Mhatre, Under Secretary, Home Department (Special), Government of Maharashtra, it is explained by the State that on receipt of the representation, on 27.4.2005 the detaining authority

called for parawise remarks from the Commissioner of Police and it was received on 2.5.2005. The representation was scrutinized and processed through the concerned assistant on 4.5.2005 and forwarded to the Under Secretary. The Under Secretary made endorsement on the same day, and forwarded the same to the Deputy Secretary and thereafter the Deputy Secretary endorsed and forwarded it to the Additional Chief Secretary (Home) for his consideration on the same day. The Additional Chief Secretary carefully considered the facts, Police Reports and all relevant documents etc of the case and rejected the application on 4.5.2005 and accordingly the reject reply was given to the detenu and his Advocate vide Government letter dated 13.5.2005.

4. Mr.Tripathi, learned Counsel for the Petitioner pointed out his ground and in reply to the said ground submitted that though the representation was rejected by the competent authority on 4.5.2005, it was not expeditiously and diligently communicated to the detenu and has advocate till 13.5.2005, and no explanation in that behalf is coming forward in the reply affidavit. In support of this contention, he relied upon (i) **AIR 1981 SC page 1126 "Harish Pahwa v. State of U.P."** (ii) **1989 (3) SCC page 173 Rama Dhondu Borade v. V.K.Saraf**

& Others and an unreported judgment of this Court in **Writ Petition No.338 of 1986 in the matter of Pushpa Hastimal Jain vs. Union of India.**

5. The learned Counsel for the State Smt.S.S.Pai,APP stated that the detenu has made representation claiming revocation of the detention order and simultaneously asking for certain copies. Therefore, it is submitted that the representation to the effect of the revocation is concerned it was rejected on 4.5.2005. However, as the prayer of the detenu in respect of the copies was under consideration it could not be communicated upto 13.5.2005 and therefore it is submitted that the whole representation has been dealt with by the State diligently and expeditiously and therefore, the ground made out by the learned Counsel for the Petitioner is without any merit.

6. So far as the facts of the case are concerned, namely, that on 26.4.2005 the detenu made a representation through his lawyer and that the same was received by the Competent authority on 27.4.2005 is not in dispute. The Competent authority has explained that on 27.4.2005 itself an endorsement was made on the said representation to obtain the parawise reply from the

Commissioner of Police and thereafter the parawise reply was prepared and it was received from the Commissioner of Police on 2.5.2005 and thereafter immediately the replies were prepared on 4.5.2005 itself and the authorities of the State Government have processed the matter and placed it before the Competent Authority. The Competent Authority, after having perused the submissions have rejected the representation.

7. At the instance of the learned Counsel for the State, we have carefully gone through the file. From the file it is noticed that the official submissions which were made by the Competent Authority showed that the representation was rejected. However, the copies were made available to the detenu. The Competent Authority while passing the order has straightway rejected the representation and has not kept the representation alive for supply of copies, so that it can be construed that the representation was alive and was under consideration for supply of copies upto 13.5.2005. And even though there are certain endorsements made by the Officers in respect of the copies etc which are of the subsequent date, it does not show that the Competent Authority has applied its mind in respect of the copies and rejected the same.

There is only rejection of representation on record and that is dated 4.5.2005. Therefore, the ultimate result is that it was only a submission at bar and it was not supported by the file of the State of Maharashtra. Equally there is no affidavit to that effect on record. The only point remains that whether the communication of rejection of representation dated 4.5.2005 on 13.5.2005 can be said to be expeditious disposal of the representation or not. In this respect, reference can be made to **1981 SCC page 1126** referred to above, which states :

> "In our opinion, the manner in which the representation made by the applicant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June 1980 when we find that it culminated only in a reference to the Law Department, not it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation and to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear , as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would

> emphasise that it is the duty of the State to proceed to determine the representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have not option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.
>
> Appeal allowed."

8. The learned Counsel has also placed reliance on **1989 (3) SCC page 173 Rama Dhondu Borade v. V.K.Saraf & Others.** After taking reveiw of the **earlier** decisions the Apex Court has laid down in para 19 and 20 as follows :

> 19. The propositions deducible from the various reported decisions of this Court can be stated thus:
>
> The detenu has an independent constitutional right to make his representation under Article 2(5) of the Constitution of India. Correspondingly, there is a constitution mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal,

> since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in Article 21 of the Constitution.
>
> 20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptituted and deligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

9. Thus, it is revealed from the above referred judgments that the communication shall be equally immediate and expeditious on the part of the Government. In an unreported judgment of this Courtdated 9.9.1986 in Writ Petition No.338 of 1986, Pushpa Hastimal Jain v. Union of India and others, this Court has found that the failure on behalf of the Respondent to explain as to why the rejection of the representation dated 5.5.1986 was not communicated till 17/18-05-1986. And having found that the delay has not been explained, the Court observed that the order stands vitiated. We have also noticed the same thing in the present case and coming to the present facts of

the case it is to be noted that no satisfactory explanation is coming forward as to why even though the order of rejection is passed on 4.5.2005, it is not communicated to the detenu upto 13.5.2005. In view of the aforestated Apex Court judgment, we find that the ground made out by the Petitioner is squarely covered and the order of detention stands vitiated. We, therefore, pass the following order:

ORDER

1. Writ Petition is allowed.

2. Order dated 16.11.2004 bearing D.O.No.122/PCB/DP/Zone-IX/2004 in respect of detenu Mohammed Iqbal @ Shembdya Iqbal @ Iqbal Jogeshwari Mohammed Hussain Mandal under sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 is hereby quashed and set aside amd the detenu is hereby set at liberty if not required in any other case.

3. Rule is made absolute accordingly.

(S.R.Sathe, J.) (S.B.Mhase, J.)

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CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE :16th August, 2005

Final Order :

For the reasons recorded seperately, the Court passed

following order:

ORDER

Writ Petition is allowed.

Order dated 16.11.2004 bearing D.O.No.122/PCB/DP/Zone-IX/2004 in respect of detenu Mohammed Iqbal @ Shembdya Iqbal @ Iqbal Jogeshwari Mohammed Hussain Mandal under sub-section 2 of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 is hereby quashed and set aside and the detenu is hereby set at liberty if not required in any other case.

. Rule made absolute accordingly.

(S.R.Sathe, J.) (S.B.Mhase, J.)